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SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 789

INGRAM M. STAINBACK, WALTER D. ACKERMAN, JR., AND W. H. LOPER,

Appellants,

vs.

MO HOCK KE LOK PO, AN ELEEMOSYNARY CORPORATION; DAI KUNG CHINESE SCHOOL, AN ELEEMOSYNARY CORPORATION; CHUNG SHAN CHINESE SCHOOL ASSOCIATION, AN ELEEMOSYNARY CORPORATION; WAH CHAN THOM, WILFRED CHONG AKD LEONG NGET CHO,

Appellees

APPELLEES' STATEMENT AS TO JURISDICTION

The appellees accept the statement of the case, as set forth in the Appellants' Jurisdictional Statement. This Court manifestly has no jurisdiction over the instant appeal. The appeal herein is improvidently and erroneously taken to this Court.

Under the express and clear provisions of Section 128 of the Judicial Code (28 U. S. C. Sec. 225), the appellants' appeal is to the Ninth Circuit Court of Appeals, not to this Court. For that section of the Judicial Code explicitly provides that appellate jurisdiction to review final judg-

ments of the District Court for Hawaii (as in the case of appeals from the District Court for Puerto Rico), in all cases, shall be to the Court of Appeals, *not* to this Court.

It is to be noted that Section 128 expressly contains a distinction between United States District Courts generally on the one hand, and the District Courts for Hawaii and Puerto Rico on the other hand. In so far as the United States District Courts generally are concerned, a direct review is saved to this Court under Section 238 of the Judicial Code (8 U. S. C. Section 345); no such reservation appears in Section 128 so far as the United States District Courts for the Territories of Hawaii and Puerto Rico are concerned.

Moreover, the Act of February 13, 1925 (44 Stat. 946, C. 229) by Section 13, provided for repeal of "so much of the Hawaiian Organic Act, as amended by the Act of July 9, 1921, as permits a direct review by the Supreme Court of cases in the courts in Hawaii."

It would seem clear that Congress, by express statutory enactments, has declared that an appeal from the Territory of Hawaii shall be to the Circuit Court of Appeals and not to this Court; and that these statutory declarations apply to the instant case. (Cf. historical note to 8 U. S. C. Section 225, appearing at 8 U. S. C. A. Section 225 (at p. 296)).

W. Y. Char & A. L. Wirin,
By A. L. Wirin,
Attorneys for Appellees.